

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS

Criminal Appeal No.S-194 of 2024

(Ashfaqe & others Vs. Wali Muhammad & another)

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

Appellants	Ashfaqe s/o Muhammad Usman Siddique s/o Ganhwar Ilyas s/o Raheem Sawan s/o Raheem Ameen @ Ambeer s/o Raheem Through: Mr. Mian Taaj Muhammad Keerio Advocate
------------	---

Respondent	Wali Muhammad s/o Muhib in person The State Through: Shahzado Saleem, A.P.G
------------	---

Date of hearing	07-08-2024
Date of Order	07-08-2024

=

ORDER

Adnan-ul-Karim Memon, J. This Criminal Appeal has been directed against the judgment dated 30.7.2024 passed by the learned Additional Sessions Judge Khipro in Sessions Case No. 01/2021, whereby, appellants were convicted under section 3(2) of Illegal Dispossession Act 2005 to suffer R.I for Five years each and to pay a fine of Rs.10,000 each. In case of default of fine, to suffer further S.I. for three months each.

2. The case of the prosecution is that the complainant Wali Muhammad had filed this direct complaint under sections 3, 4, 5 & 8 of the Illegal Dispossession Act, 2005 against the above-named appellants with allegations that he owns Desert Land in the shape of Talli "Kainro Je Bhar Wari" admeasuring 16-0 acres situated in Deh Ranak Dahar, Tapo Ranaho, Taluka Khipro, District Sanghar having been in his possession since his forefathers and such entry is mutated in Revenue record in his favour. However, the appellants forcibly and illegally occupied the khatalan/desert Talli of the complainant by dispossessing him and constructed a room forcibly over it. The complainant approached the trial Court and the learned trial Court after hearing both parties and considering the report submitted by SHO and Mukhtiarkar (Revenue) Khipro, took cognizance of the offense and framed the charge against the appellants. At trial, the complainant examined himself as PW-01 at Exh.08, he produced a direct complaint at Exh.08/A, scan copy of land at Exh.08/B, a True copy of F.C. suit filed by accused persons, order on it at Exh.08/C and 08/0. Complainant next examined

Abdul Wahab as Exh.09, PW-3 Touqeer Ahmed Qazi Mukhtiarkar Khipro at Exh.11, who produced attested photostat copy of entry No.017 dated 05-03-2018 in the name of Muhammad Ishaque and Wali Muhammad S/o Mohib 50% share, scanning NO.1005013 dated 15-01-2019 at Exh.11/A.

3. Appellants in their statements U/s 342 Cr. P.C denied the allegations and pleaded false implication. They neither examined them on oath nor led evidence in their defense. The learned trial Court after hearing the parties, passed the impugned judgment dated 30-07-2024 and convicted the appellants.

4. During the hearing of this appeal, an affidavit dated 07-08-2024 has been filed and duly sworn by the complainant, who is present in person, stating therein that he is not pressing conviction against the appellants, as he has compromised the matter with them and has received the possession of the subject property as such if the appellants may be acquitted from the charge under section 345, Cr.P.C. The contents of paragraphs No.02 to 05 of the affidavit are reproduced as under;

“2. That the accompanying affidavit for NO OBJECTION in above appeal, has been drafted and moved under my instructions, contents of which are true and correct and ay be treated as part and parcel of this affidavit.

3. That I say that our dispute was patched with above named appellants/accused out of the court due to the intervention of respectable Nek Mards of Locality, therefore, I do hereby extend no objection for acquit the appellants/accused in the above appeal.

4. That I have no objection if this Honourable Court may acquit the appellants/accused of the above criminal appeal.

5. That I am swearing this affidavit with my own free will, and wish consent without any force, fraud, or coercion.”

5. Learned Additional Prosecutor has no cavil to the proposition so put forward by the complainant.

6. I have heard the learned counsel for the appellants, learned Additional Prosecutor as well as the respondent/complainant who is present in person and have gone through the material available on the record as well as the affidavit filed by the complainant to the extent that he has compromised the matter with the appellants and does not intent to prosecute the appellants furthermore.

7. The question involved in the present proceedings is whether, the offenses under sections 3, 4, 5 & 8 of the Illegal Dispossession Act, 2005 are compoundable and whether the parties can be allowed to enter into compromise under section 345 Cr. P.C. Primarily the law on the subject is silent; however, section 4 of the Act, 2005 provides that the offenses under the said Act are non-cognizable.

8. In principle, a compromise in a non-compoundable offense is considered only as a mitigating circumstance for the reduction in sentence, but at the same time, the criminal complaint is governed by the scheme of the Criminal

Procedure Code; and section 345 Cr.P.C. is applicable and this is the reason that offense related to the property, which being of civil nature, is compoundable; therefore, the contention of the learned counsel for the parties that the offenses in terms of Illegal Dispossession Act are compoundable and this Court can entertain the request of the complainant to compromise the matter with the appellants, at the appellate stage, seems to be reasonable, as section 9 of the Act, 2005 provides that unless provided in the Illegal Dispossession Act, the provisions contained under the scheme of Criminal Procedure Code shall apply to all the proceedings under the Act.

9. It is well-settled law that a non-compoundable offense of a particular section of law should not be read in isolation and a more beneficial interpretation should be given to it, more particularly, when the parties have decided to bury their hatchets in an illegal dispossession case under section 3 of the Illegal Dispossession Act, 2005 as both parties have amicably settled all their differences and have agreed to pass the rest of their lives in peace, tranquility, and harmony as such there is no legal impediment to accepting the request of the parties.

10. In view of the above facts and circumstances of the case, the request of parties for compounding the offense in terms of section 345(6) Cr. P.C. is accepted; consequently, the instant appeal is allowed based on the compromise of the parties, the impugned Judgment dated 30-07-2024 passed by the learned Additional Sessions Judge, Khipro is set aside. The appellants are acquitted of the charge in the subject case and they be released from prison forthwith if not required in another case.

11. The appeal stands disposed of accordingly.

JUDGE

“Ali Sher”